

## BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of )

MUR 5589R )

THE BUFFALO COUNTY )

PROGRESSIVES )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal.<sup>1</sup> The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5589R as a low-rated matter. In this case the respondent, The Buffalo County Progressives ("BCP"), allegedly made expenditures in excess of \$1,000 to influence federal elections, but failed to register and report as a political committee. The complainant asserts that BCP spent a minimum of \$1,517 in advertising costs supporting federal candidates running in the 2004 election. The BCP denies that its expenditures exceeded \$1,000 and claims the major purpose of its advertising was to inform the public on important issues.

Based upon a review of the communications at issue, it is questionable whether BCP made expenditures amounting to \$1,000, which could have triggered a registration and reporting obligation with the Commission. While BCP may not have fully complied with the Federal Election Campaign Act's disclaimer requirements, or with reporting requirements

under 2 U.S.C. § 434(c), in light of the de minimis amount of the alleged activity and after a review of the merits of MUR 5589R in furtherance of the Commission's priorities and resources relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

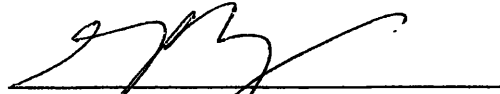
**RECOMMENDATION**

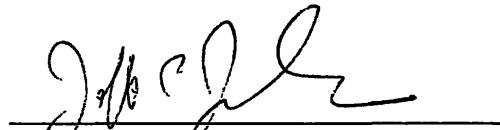
The Office of General Counsel recommends that the Commission dismiss MUR 5589R, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

James A. Kahl  
Deputy General Counsel

4/13/06  
Date

BY:

  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Attachment:  
Narrative in MUR 5589R

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4 **MUR 5589R**

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6 **Complainant:** Kelly J. Herold

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8 **Respondents:** The Buffalo County Progressives

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10 **Allegations:** The complainant alleges that the respondent, The Buffalo County  
11 Progressives ("BCP"), made expenditures in excess of \$1,000 to influence federal  
12 elections, but failed to register and report as a political action committee. Specifically,  
13 the respondent allegedly paid for advertisements in support of Presidential or U.S. Senate  
14 candidates in two newspapers in August through October 2004, for billboard space  
15 advocating the defeat of President Bush, and for mass mailings supporting candidate John  
16 Kerry. The complainant noted that he obtained the approximate cost for the ads by  
17 calling the various advertising venues.

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19 **Responses:** The Buffalo County Progressives responded by noting that they are a small  
20 group of friends that formed for the purpose of educating the public about "important  
21 issues of the day." BCP claims that their advertisements during the 2004 election were  
22 not intended to expressly advocate for a particular candidate, but rather the purpose of the  
23 ads were to inform the public. Moreover, they assert that their total costs did not exceed  
24 \$1,000 (although they did not provide an exact dollar figure in their response).

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29 **Response filed:** November 30, 2004

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